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Bandar Utama City Corp Sdn Bhd (previously Damansara Jaya Sdn Bhd) v Majlis Bandaraya Petaling Jaya

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HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 22NCVC-1046–08 OF 2012
CHAN JIT LI JC
20 JULY 2017

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Land Law — Ownership — Title to land — Plaintiff filed action against defendant seeking injunction to restrain defendant from trespassing onto plaintiff's land — Whether plaintiff's ownership of land defeated by virtue of inability to produce title — Whether plaintiff's ownership of land extinguished by its designation of land as 'kawasan lapang'

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Land Law — Trespass — Injunction — Plaintiff filed action against defendant seeking injunction to restrain defendant from trespassing onto plaintiff's land — Whether plaintiff's ownership of land defeated by virtue of inability to produce title — Whether plaintiff's ownership of land extinguished by its designation of land as 'kawasan lapang' — Land Acquisition Act 1960 ss 24, 25 & 26 — National Land Code ss 78(3) & 166(1)(h)

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The plaintiff was a registered owner of a piece of land identified as Lot 15390, Mukim Sungai Buloh, District of Petaling ('Lot 15390'). Lot 15390 was subjected to a land acquisition exercise under the Land Acquisition Act 1960 ('the LAA'). As a result of the acquisition, the plaintiff was left with a remainder of the former Lot 15390 ('the triangular land') but the plaintiff had failed to

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apply for the issuance of a new title for the triangular land. The triangular land was connected to a road called Jalan Tanjong and the members of the public using Jalan Tanjong found it convenient to use the triangular land to continue their journey. To prevent its land from being used as a thoroughfare, the plaintiff placed some structure on it. Problem arose when the defendant's

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agents entered the triangular land and removed the said structures to enable the public to have access to the said land. Dissatisfied with the defendant's action, the plaintiff brought the present suit against the defendant seeking an injunction to restrain the defendant, its officers and/or its workers and/or its agents from trespassing on the plaintiff's land. It ought to be noted that the

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triangular land was designated as 'kawasan lapang' by the plaintiff for the them to secure planning approval for the development of the other pieces of land in the vicinity. The defendant referred to s 78(3) of the National Land Code ('the NLC') and contended that, due to the failure of the plaintiff to show that the plaintiff had been issued with a title to the triangular land, the plaintiff

therefore could not be said to be the registered owner of the said land. The defendant further submitted that the plaintiff had lost ownership of the triangular land upon designation of the said land as a 'kawasan lapang' ('the defendant's submission'). A

Held, allowing judgment in favour of the plaintiff: B

(1) Section 78(3) of the NLC dealt with the issue of a final document of title ie the title issued at the instance of a first alienation and in the present case, that would be the title the parties referred to as Lot 15390. However, the triangular land which was a remainder of the partially acquired Lot 15390 was not a subject of a fresh alienation. Therefore, the document in question should not be a final title but a title in continuation consonant to ss 24, 25 and 26 of the LAA. Based on s 166(1)(h) of the NLC, it was clear that the duty lay with the registrar/land administrator to issue the title in continuation. There was no obligation on the part of the landowner to apply for the title in continuation. Therefore, the plaintiff's ownership of the land was not defeated by its inability to produce a title in continuation (see paras 13–14 & 17–19). C D

(2) The proposed surrender of ownership was not a gift but solely for the purpose of enabling the plaintiff to develop its other properties. If the defendant's submission was to be accepted, it would result in a situation in which the plaintiff would suffer the loss of its land even if it should change its mind to develop its other properties as per the approved plans. Therefore, a mere designation of the disputed land as 'kawasan lapang' did not deprive the plaintiff's ownership of the land (see para 21). E F

[Bahasa Malaysia summary

Plaintif adalah pemilik berdaftar sebidang tanah yang dikenali sebagai Lot 15390, Mukim Sungai Buloh, Daerah Petaling ('Lot 15390'). Lot 15390 adalah tertakluk kepada pengambilan tanah yang dijalankan di bawah Akta Pengambilan Tanah 1960 ('APT'). Akibat pengambilan tanah tersebut, plaintif hanya ditinggalkan dengan baki tanah Lot 15390 tersebut ('tanah berbentuk tiga segi') tetapi plaintif gagal untuk memohon bagi pengeluaran hakmilik baru untuk tanah berbentuk tiga segi tersebut. Tanah berbentuk tiga segi tersebut adalah berkait dengan jalan yang dipanggil Jalan Tanjong dan orang awam yang menggunakan Jalan Tanjong mendapati ianya mudah untuk menggunakan tanah berbentuk tiga segi tersebut untuk meneruskan perjalanan mereka. Untuk menghalang tanahnya daripada digunakan sebagai jalan besar, plaintif meletakkan beberapa halangan di atasnya. Masalah berbangkit apabila ejen-ejen defendan memasuki tanah tersebut dan membuang halangan-halangan tersebut bagi membolehkan orang awam mempunyai akses kepada tanah tersebut. Tidak berpuas hati dengan tindakan defendan, plaintif membawa tindakan ini terhadap defendan dengan G H I

A memohon injunksi bagi menghalang defendan, pegawai-pegawainya dan/atau pekerja-pekerja dan/atau ejen-ejennya daripada menceroboh ke atas tanah plaintif. Ia perlu diambil kira bahawa tanah berbentuk tiga segi tersebut dinamakan sebagai 'kawasan lapang' oleh plaintif bagi pihak mereka untuk mendapatkan kelulusan perancangan bagi pembangunan beberapa bidang B tanah yang lain dalam kawasan tersebut. Defendan merujuk kepada s 78(3) Kanun Tanah Negara ('KTN') dan berhujah bahawa, akibat kegagalan plaintif untuk menunjukkan bahawa plaintif telah diberikan dengan hakmilik kepada tanah berbentuk tiga segi tersebut, plaintif oleh itu tidak boleh dikatakan sebagai pemilik berdaftar tanah tersebut. Defendan selanjutnya berhujah C bahawa plaintif telah kehilangan pemilikan ke atas tanah berbentuk tiga segi tersebut selepas penamaan tanah tersebut sebagai 'kawasan lapang' ('hujahan defendan').

Diputuskan, membenarkan penghakiman memihak plaintif:

D (1) Seksyen 78(3) KTN berurusan dengan isu dokumen muktamad hakmilik iaitu hakmilik yang dikeluarkan pada permulaan pengambilan tanah pertama dan dalam kes ini, ia adalah hakmilik yang dirujuk oleh pihak-pihak sebagai Lot 15390. Walau bagaimanapun, tanah berbentuk E tiga segi tersebut yang mana adalah baki tanah Lot 15390 yang diambil sebahagiannya bukan tertakluk kepada pengambilan tanah baru. Oleh itu, dokumen yang dipersoalkan tidak boleh menjadi hakmilik muktamad tetapi hakmilik sambungan konsonan kepada ss 24, 25 dan 26 APT. Berdasarkan s 166(1)(h) KTN, ia adalah jelas bahawa kewajiban F terletak ke atas pendaftar/pentadbir tanah untuk mengeluarkan hakmilik sambungan. Pemilik tanah tidak bertanggungjawab untuk memohon bagi hakmilik sambungan. Oleh itu, pemilikan plaintif terhadap tanah tersebut tidak dipatahkan oleh ketidakupayaannya untuk mengemukakan hakmilik sambungan tersebut (lihat perenggan 13–14 & 17–19).

G (2) Penyerahan milikan yang dicadangkan bukan hadiah tetapi semata-mata bagi tujuan membolehkan plaintif membangunkan hartanahnya yang lain. Jika hujahan defendan diterima, ia akan mengakibatkan keadaan di mana plaintif akan mengalami kerugian terhadap tanahnya walaupun H sekiranya ia menukar fikiran untuk membangunkan hartanahnya yang lain seperti pelan yang diluluskan. Oleh itu, penamaan sahaja terhadap tanah yang dipertikaikan sebagai 'kawasan lapang' tidak menafikan pemilikan plaintif terhadap tanah tersebut (lihat perenggan 21).]

I **Notes**

For a case on injunction, see 8(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5926.

For cases on title to land, see 8(3) *Mallal's Digest* (5th Ed, 201 Reissue) paras 4366–4367.

Cases referred to

Land Administrator, District of Gombak v Huat Heng (Lim Low & Sons) Sdn Bhd [1990] 3 MLJ 464; [1991] 1 CLJ Rep 356, SC (refd)

Legislation referred to

Land Acquisition Act 1960 ss 24, 25, 26
National Land Code ss 5, 78(3), 166(1)(h), (2), 200

Mohd Arief Emran bin Ariffin (CK Lim and Deborah Yee with him) (Wong & Partners) for the plaintiff.
Kamaruzaman bin Muhammad Arif (Sofiah Omar and Nurliza bt Shafien) (Kamaruzaman Arif, Amran & Chong) for the defendant.

Chan Jit Li JC:

[1] On the day of hearing, before the trial commenced, learned counsel for the plaintiff informed the court that the plaintiff was withdrawing the action against the first defendant. The claim against the first defendant was therefore struck out and by consent there was no order as to costs. Thus the plaintiff's claim now is only against the second defendant, namely, the Majlis Bandaraya Petaling Jaya ('the defendant').

[2] The plaintiff, a company, is the registered owner of a piece of land identified as Lot 15390, Mukim of Sungai Buloh, District of Petaling.

[3] The defendant, the Majlis Bandaraya Petaling Jaya, is a local authority.

[4] The plaintiff's claim against the defendant is premised on the tort of trespass.

[5] The agreed background facts leading to the present dispute between the parties are as follows. This piece of land was subjected to a land acquisition exercise under the Land Acquisition Act 1960 ('the LAA') carried out by the government for the purpose of the construction of the North Klang Valley Expressway (NKVE) highway. As a consequence of the acquisition exercise, the plaintiff was left with a remainder of the former Lot 15390. However, it was only at the hearing that the plaintiff's main witness, one Teo Chiang Kok its Company Director ('PW1'), realised that it had failed to apply for the issuance of a new title for this remainder land (due to the shape I shall refer to the land as the 'triangular land').

[6] The triangular land is connected to a road called Jalan Tanjong Bandar Utama ('Jalan Tanjong'). Members of the public using Jalan Tanjong found it convenient to use this triangular land to continue on their journey. To prevent

its land from being used as a thoroughfare, the plaintiff placed some structures on it. On 17 August 2012 the defendant's agents entered the land and removed the said structures to enable the public to have access to the land.

[7] As a result of this, the plaintiff instituted the present suit against the defendant seeking an injunction to restrain the defendant from (allegedly) trespassing onto Jalan Tanjong, damages for the trespass, other consequential reliefs.

[8] The plaintiff is the owner of a very large area of land at the vicinity of Lot 15390. It was desirous of developing the other pieces of land in the vicinity. It applied to the relevant authorities for planning approval. In order to secure the said approval, the plaintiff was obliged, amongst other conditions, to designate a certain percentage of its land as vacant land or 'kawasan lapang'. The triangular land was one of the areas designated as such. The building plans have now been approved vide the amended layout plan registered by Jabatan Perancang Bandar dan Desa Negeri Selangar as JPBD/B9/334/91/PD in 1991.

[9] Prior to the commencement of the hearing, learned counsel for both the plaintiff and the defendant intimated to the court that the defendant was not disputing the plaintiff's ownership of the triangular land. This has been so recorded. However, at the end the trial, the defendant's submission was premised chiefly on the plaintiff's lack of ownership.

[10] The issues for my determination, as discerned from the submissions, are as follows:

(a) is the plaintiff's ownership of the triangular land defeated by virtue of its inability to produce a title? and

(b) has the plaintiff's ownership of the triangular land been extinguished by its designation of the land as a 'kawasan lapang'?

Is the plaintiff's ownership of the triangular land defeated by virtue of its inability to produce a title?

[11] On this issue, Dato Kamarul Zaman, learned counsel for the defendant, submits that the backbone of the Malaysian land law is the principle of indefeasibility of title and ownership can only be ascertained through a formal issue of title. In this instant case, PW1 was unable to show that the plaintiff had been issued with a title to the triangular land. As such the plaintiff cannot be said to be the registered owner of the land. He relies on s 78(3) of the National Land Code ('the NLC') in support of his argument.

[12] Section 78(3) NLC provides as follows:

78 How alienation is effected

(1) The alienation of State land under final title shall be effected in accordance with the provisions of Chapter 3.

(2) The alienation of State land under qualified title shall be effected in accordance with the provisions of Chapter 2 of Part Eleven.

(3) The *alienation of State land shall take effect upon the registration of a register document of title* thereto pursuant to the provisions referred to subsection (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time. (Emphasis added.)

[13] With respect to learned counsel for the defendant, I find his submissions untenable. Section 78(3) deals with the issue of a final document of title which has been defined under s 5 of the NLC as follows:

final document of title

means any document of title relating to land held under final title, or prepared for the purpose of its being so held;

final title

means Registry title, Land Office title and subsidiary title (that is to say, all forms of title other than qualified title);

This would be the title issued at the instance of a first alienation and in this case that would be the title the parties referred to as Lot 15390.

[14] However, in this case the triangular land is not a subject of a fresh alienation. It is undisputedly a remainder of the partially acquired Lot 15390. Therefore, the document in question should not be a final title but a title in continuation consonant to ss 24, 25 and 26 of the Land Acquisition Act 1960.

[15] The sections provide as follows:

24 Delivery of issue and other documents of title

(1) Where the issue document of title to any scheduled land has not previously been delivered to him, the Land Administrator shall, by a notice in writing in Form L require any person in whose possession such document may be, to deliver such document to the Land Administrator; and upon service of such notice upon him such person shall be legally bound to deliver such document to the Land Administrator.

(2) ...

25 Revision of rent and resurvey where part of lot acquired

(1) Where only part of a lot is acquired under this Act, the Land Administrator shall revise the rent (if any) payable by the proprietor by reference to the estimated area of the part not acquired and, in the case of

land held under Registry title or title evidenced by an entry in the Interim Register, shall cause the part retained by the proprietor to be resurveyed.

(2) When part of a lot has been resurveyed pursuant to subsection(1), the revised rent (if any) payable by the proprietor shall be recalculated by reference to the area of the part as established by the survey.

(3) Rent revised or recalculated under subsection (1) or (2) shall become payable at the revised or recalculated rate at the beginning of the calendar year following the calendar year in which the revision or recalculation takes place.

26 Title in continuation where part of lot acquired

(1) Where part of a lot has been resurveyed pursuant to subsection 25(1), the proper registering authority shall —

(a) in the case of land held under Registry title, issue title in continuation to the part retained by the proprietor as if he were issuing title in continuation to land as a whole;

(b) in the case of land held under title evidenced by an entry in the Interim Register, issue title in continuation to the part so retained in accordance with subsection (2).

(2) For the purposes of subsection (1) title in continuation shall, notwithstanding anything in the State land law, consist of a fresh folio of the Interim Register which shall replace and shall be in the same form as the folio relating to the original lot.

(3) Where a lot which has been partially acquired is held under qualified title, the proper registering authority shall —

(a) correct the boundaries shown on the register document of title; and

(b) if an issue document of title exists and has been delivered to the Land Administrator pursuant to section 24, correct the boundaries shown thereon and return the document to the person who so delivered it.

[16] From a reading of the above, it is clear that the proprietor of a land which is compulsorily acquired under the LAA is required to surrender the document of final title to the land administrator. In the event of a partial acquisition, the land administrator is required to conduct a resurvey of the remainder land and thereafter must issue a title in continuation. The title in continuation will then show the new boundaries of the land.

[17] The powers to issue a title in continuation is derived from s 166(1)(h) of the NLC which provides as follows:

Chapter PART TEN PREPARATION AND MAINTENANCE OF REGISTERS OF FINAL TITLE

Continuation of Title to Land as a Whole

Circumstances in which title in continuation may be issued to land as a whole.

166(1) The circumstances in which title in continuation may be issued under this Chapter to any land as a whole are as follows —

(a) where the Registrar or Land Administrator decides with respect to the register document of title thereto —

(i) at the time when he makes any entry thereon, that there is insufficient space for the making of further entries; or

(ii) at any time, that the document can, by reason of its physical condition, no longer be used;

(b) where, on its production to him for any purpose, the Registrar or Land Administrator makes a similar decision with respect to the issue document of title thereto;

(c) where, by a notice or notices under section 15, the Registrar or Land Administrator has called upon the proprietor, and any chargee, lienholder or other person or body whom he may have reason to believe to be in possession thereof, to produce the issue document of title, and the notice or notices have not been complied with;

(d) where an application therefor has been made by any person or body in accordance with the provisions of subsections (2) and (3), on the grounds that the issue document of title has been lost, or wholly or partially destroyed, or is being improperly or wrongfully withheld;

(e) where, on a partial surrender of land or on the re-survey of a natural boundary, the Registrar is required by subsection (3) of section 202 or subsection (3) of section 354 to issue title in continuation as if he were issuing title in continuation to land as a whole;

(f) where any alienated land has been partially affected by encroachment by the sea or any river;

(g) where a document of title relates to more than one lot;

(h) *where only part of a piece of land has been acquired by the State and the part left unacquired has been resurveyed;*

(i) where the Registrar or Land Administrator decides that a multileaf title is required to be issued; and

(j) where action has been taken under subsection (2) of section 160B.

(2) An application under paragraph (d) of subsection (1) may be made by the proprietor of the land in question, or by any person or body claiming through the proprietor.

(3) Every such application shall be made in writing to the Registrar or, in the case of land held under Land Office title, the Land Administrator, and shall be supported by such evidence of the loss, destruction or withholding therein alleged as the Registrar or Land Administrator may require.

A (4) For the purpose of paragraph (1)(h), if the part acquired refers wholly or in part to underground land, the title in continuation to be issued for the part left unacquired shall be endorsed in accordance with the provision of subsection 92B(2). (Emphasis added.)

B **[18]** The provisions are clear: the duty lies with the registrar/land administrator to issue the title in continuation. There is no obligation on the part of the landowner to apply for the title in continuation as reflected sub-s (2) above.

C **[19]** It is therefore my finding that the plaintiff's ownership of the land is not defeated by its inability to produce a title in continuation.

Is the plaintiff's ownership of the land extinguished by its designation of the land?

D **[20]** In response to learned counsel for the defendant's suggestion that the plaintiff had lost ownership of the land upon designation of the land as a 'kawasan lapang', PW1 denied that it was so. He explained that a procedure must be complied with before the land can be surrendered to the state E authority. The plaintiff must first complete the development as per the approved plans. Then it is obliged to landscape all areas designated as 'kawasan lapang'. Only then can the plaintiff apply for the surrender of the land under s 200 of the NLC which provides as follows:

200 Applications for approval of surrender of part

F (1) Any application for approval by a proprietor wishing to surrender a part only of the land comprised in his title shall be made in writing to the Land Administrator in Form 12B, and shall be accompanied by —

(a) such fee as may be prescribed;

G (b) a plan showing the details of the proposal, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Land Administrator may require;

(c) all such written consents to the making of the application as are required under paragraph (c) of subsection (1) of section 196; and

H (d) subject to subsection (3), the issue document of title to the land.

(2) Upon receiving any such application, the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land.

I (3) An application under subsection (1) may be submitted without the issue document of title if that document is in the hands of any person as chargee, or has been deposited with any person as security for a loan; but in any such case, the application shall be accompanied instead by a copy of a request by the proprietor, served on that person under subsection (2) of

section 244 or, as the case may be, subsection (4) of section 281, for the production of the document at the Land Office within fourteen days of the date thereof. A

(4) In a case falling within subsection (3), no action shall be taken on the application until the issue document, or a replacement thereof, is in the hands of the Land Administrator; and accordingly, if the document is not produced pursuant to the request referred to in that subsection, or to any notice served under section 15 on default in compliance with the request, title in continuation (or, where appropriate, a duplicate issue document only) shall be prepared under Chapter 3 of Part Ten as if the circumstances were as specified in paragraph (c) of subsection (1) of section 166. B C

Thus until those steps have been taken, the ownership of the land remains with the plaintiff.

[21] I find simple logic defies the defendant's contention but supports the plaintiff's contention. The proposed surrender of ownership is not a gift but solely for the purpose of enabling the plaintiff to develop its other properties. If the defendant's submission is to be accepted, it would result in a situation in which the plaintiff would suffer the loss of its land even if it should change its mind to develop its other properties as per the approved plans. I therefore find that a mere designation of the disputed land as 'kawasan lapang' does not deprive the plaintiff ownership of the land. D E

[22] My findings that the plaintiff remains the landowner is further fortified by *Land Administrator, District of Gombak v Huat Heng (Lim Low & Sons) Sdn Bhd* [1990] 3 MLJ 464; [1991] 1 CLJ Rep 356. That case related to the sum of compensation payable subsequent to a government acquisition of the land. The initial category of use for that land was 'agriculture'. The respondent-landowner had successfully applied for a change of land use. The application was approved subject to certain conditions. Amongst them, was that the landowner should surrender certain portions of the land to the state authority for the construction of roads for public usage. The respondent did not object to any of the conditions attached to the approval and had in fact paid all necessary fees. As the portion acquired was the portion reserved for the construction of the roads, the land administrator made a nominal award of RM10,000. The High Court increased the sum of award but on appeal the Supreme Court reinstated the land administrator's award. F G H

By allowing the award, regardless of the sum, the land administrator, the High Court and the Supreme Court effectively acknowledged that the respondent was still the landowner. And this recognition is despite the purpose of the surrender to the State Authority ie the change in the category of land use had been achieved and the acquired land had been designated for construction of public roads. I

[23] As I find the plaintiff the rightful owner of the land in question, I allow judgment in favour of the plaintiff in respect of prayer 11(i) of the statement of claim namely an injunction to restrain the defendant, its officers and/or its workers and/or its agents from trespassing on the plaintiff's land as learned counsel for the plaintiff indicated to the court that the plaintiff was not concerned with the other reliefs.

As I find the plaintiff the rightful owner of the land in question, I allow judgment in favour of the plaintiff in respect of prayer 11(i) of the statement of claim namely an injunction to restrain the defendant, its officers and/or its workers and/or its agents from trespassing on the plaintiff's land as learned counsel for the plaintiff indicated to the court that the plaintiff was not concerned with the other reliefs.

Judgment allowed in favour of plaintiff.

Reported by Dzulqarnain Ab Fatar